

Applicant : Frans Johan Sarneel et al.

Serial No. : 10/586,321

Filed : July 14, 2006

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Attorney's Docket No.: 19790-0012US1 / CER03-0023

Amendments to the Drawings:

Please replace the drawings currently in the application with the attached formalized drawings.

REMARKS

Claims 1-9 and 11-22 are pending. No claims have been amended and no new claims have been added in this Response.

**Drawings**

Applicants have submitted formal drawings with this response. Applicants respectfully request that the objection to the drawings be withdrawn.

**Specification**

Applicants have amended the specification as requested by the Office to identify trade names in capital letters. SIMEX© is a company name and, therefore, is not associated with any generic terminology. The remaining trade names in Table 1 of the specification have been amended to be capitalized. Applicants note that the generic terminology for the trade names used in Table 1 are in the footnote of the table. In view of these amendments, Applicants respectfully request that the objection to the specification be withdrawn.

**Claim Rejections—Section 103**

(1) Claims 1, 2, 4, 5, 7-9, 11-2 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent No. 4,529,607 (Lenchin) in view of U.S. Patent. No. 4, 208,442 (Evans et al.) and further in view of U.S. Patent No. 3,767,826 (Fruin). According to the Office, Lenchin teaches the use of starch modified with 1-octenylsuccinic anhydride (resulting in starch n-octenyl succinate). Evans teaches the use of starch alkenyl succinate at 0-13% of the dry mix, and Fruin teaches the use of bleached or oxidized starch, treated with hypochlorite, in a batter mix at roughly 50% of the dry mix. According to the Office, it would have been obvious to a person of ordinary skill to combine the teachings of Evans and Fruin to modify the Lenchin batter to provide a coating having a crisp texture and taste, a uniform coloration and appearance

and good adhesion to the comestible surface and to increase the adhereability . . . of the batter. Applicant respectfully traverses this rejection.

The Office has not made out a *prima facie* case of obviousness.

First, the references themselves suggest that a person of skill would not combine their teachings. Lenchin is directed to batter mixes for microwaveable products, whereas Fruin relates to a coating for fried products and Evans relates to a coating for a baked product. Lenchin specifically states that batter mixes for crispy fried products or pre-fried products which are later to be baked products do not produce crispy pre-fried products if microwaved instead. Consequently, it is unreasonable to suggest that a person of skill would seek to combine a reference relating to batter mixes for microwaveable products with a reference relating to batter mixes for fried or baked products where the art clearly suggests that such a combination would not succeed.

Second, the Office has inappropriately used the Applicant's specification as a hind sight guide to search for art identifying various aspects of the claims and then pieced the results together. The Applicants note that Lenchin does not provide any exemplary compositions that include even a single ingredient recited in the pending claims. Whereas the Office states that Lenchin teaches the use of starch modified with 1-octenylsuccinic anhydride, the Office nowhere indicates where Lenchin in fact provides such a teaching, and Applicant has not found such a teaching within Lenchin. Accordingly, the Office's rejection appears to be that the claimed compositions are obvious merely because batter mixes are known, for example as shown in Lenchin, and the various ingredients of the pending claims are known, for example as shown in Evans and Fruin. Such an argument cannot support a *prima facie* case of obviousness—it is simply not reasonable to suggest that a person of skill would completely change the Lenchin compositions to arrive at the compositions of the pending claims because batter mixes and various ingredients are known.

Third, at best Lenchin includes only a single example with a modified starch (although not a starch alkenyl succinate). And the example does not state that any of the flour ingredients

are bleached and/or oxidized. The art relating to batter mixes is extensive. A person of skill reading Lenchin faces an enormous number of possibilities for modifying the compositions exemplified in Lenchin (assuming one would even be motivated to modify Lenchin). For example, the compositions can be modified according to teachings within Lenchin (which do not suggest use of a starch alkenyl succinate or a bleached and/or oxidized flour), which modifications themselves represent numerous possibilites. Or a person of skill could look to the broader teachings across the extensive batter mix literature leading to an even greater and unbounded number of possibilities. The Office has not articulated a sound reason why a person of skill would be motivated to focus on Evans and Fruin rather than any one of many other numerous possible teachings in the art in modifying Lenchin.

Fourth, a person of skill would not be motivated to modify Lenchin with Evans or Fruin for the reasons articulated by the Office. According to the Office, one would modify Lenchin with Evans and Fruin to achieve good adhesion. However, Lenchin states that its product already provides good adhesion. Col. 3, lines 11-15. Consequently, a person of skill would not consider adhesion a problem of Lenchin's that required a solution and therefore would not be motivated to modify Lenchin for this reason. Further, even if adhesion was considered problematic, and, even assuming Evans teaches a possible solution for improving adhesion, Evans does not provide the only possible approach. For example, U.S. Patent No. 3,052,545 discussed in the background of Lenchin is stated to provide a high degree of adhesion. U.S. Patent No. 3,208,851, also discussed in the background of Lenchin, is stated to possess improved adhesion. The Office has not provided a reason why a person of skill, without the benefit of the instant specification, would look to Evans in combination with Fruin rather than any one of many other art references to solve the problem of adhesion.

For at least these reasons, the pending claims are patentable over the cited art and the 103 rejections should be withdrawn.

No fees are believed due in connection with this filing, however please apply any charges or credits to deposit account 06-1050.

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Respectfully submitted,

January 26, 2009  
Date: \_\_\_\_\_

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